PEARL STREAMS SDN BHD v. BEVERLY HEIGHTS RESOURCES SDN BHD & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
MOHD NAZLAN GHAZALI JCA
AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NOS: B-02(NCvC)(W)-103-01-2023
& B-02(NCvC)(W)-122-01-2023]
1 OCTOBER 2025

Abstract – *(i) Once parties agree to place a document in Part A of the common agreed bundle of documents, under O. 34 r. 2(2) of the Rules of Court 2012, both the contents and the truth of the contents of that document are deemed to be proved. In the case at hand, the document placed in Part A is an agreement. The agreement is therefore binding on the parties. Placing a document in Part A is fatal to a party attempting to challenge the reality or legality of the transaction documented therein, unless the validity of the agreement for categorisation itself is successfully challenged; (ii) An agent who executes an agreement on behalf of a company/principal, and whose designation and authority are confirmed by documents placed in Part A of the common agreed bundle of documents, is deemed to possess both actual and apparent authority to bind the company/principal in that transaction; (iii) A vendor's solicitor does not owe a duty of care to a purchaser who is represented by their own separate solicitor.*

CIVIL PROCEDURE: *Case management – Pre-trial case management – Bundle of documents – Part A documents – Effect of placing documents in Part A of common agreed bundle of documents – Whether agreement on contents amounts to agreement on truth of contents – Whether parties bound by categorisation of documents – Whether validity of agreement could be challenged – Rules of Court 2012, O. 34 r. 2(2)*

CONTRACT: *Agreement – Sale and purchase agreement – Property transaction – Validity – Whether transaction was illegal moneylending disguised as sale and purchase agreement – Burden of proof – Whether burden of proving illegal moneylending discharged – Whether there was conspiracy to defraud through illegal moneylending transaction – Moneylenders Act 1951, s. 2*

AGENCY: *Agent – Authority of agent – Actual and apparent authority – General Manager executing sale and purchase agreement on behalf of company – Whether acting as agent of company – Whether agent had authority to bind principal*

TORT: *Negligence – Professional negligence – Duty of care – Solicitor acted for vendor while purchaser represented by own solicitor – Whether vendor's solicitor owes duty of care to purchaser – Whether relationship of proximity exists – Whether vendor's solicitor liable for releasing funds to vendor's authorised representative*

DAMAGES: *Measure of damages – Loss of prospective profit – Claim for loss of profit from proposed resale – Whether there was formal agreement with proposed purchaser – Whether claim sustainable – Whether prospective profit speculative*

Pearl Streams Sdn Bhd ('Pearl Streams') had purchased a condominium unit from Beverly Heights Resources Sdn Bhd ('Beverly Heights'), a property developer, for RM560,000 and the transaction was documented in a sale and purchase agreement ('SPA') and a deed of mutual covenant ('DMC'). The General Manager of Beverly Heights, Tong Kah Hoe ('TKH'), signed the SPA on behalf of Beverly Heights. KV Ong, Chua & Partners ('KV Ong') was Beverly Heights' panel solicitor while Pearl Streams was represented by its own solicitor, Loke Chee Min ('LCM'). Pearl Streams paid the full purchase price of RM502,500 (after a discount of RM57,500) by cheque to KV Ong as stakeholder. The funds were subsequently released to TKH. Simultaneously with the execution of the SPA, TKH issued a letter on Beverly Heights' letterhead offering a buyback option whereby Beverly Heights could repurchase the property within three months at the same price. This option, however, was not exercised. When Pearl Streams subsequently attempted to resell the property to a third party for RM800,000, Beverly Heights denied that it had sold the property to Pearl Streams and claimed that TKH had acted without authority. Beverly Heights alleged that the transaction was an illegal moneylending arrangement disguised as a property sale. Pearl Streams sued Beverly Heights and KV Ong for, *inter alia*, a declaration that the SPA was valid, refund of the purchase price, and loss of prospective profit from the failed resale. Both Beverly Heights and KV Ong ('defendants') counterclaimed against Pearl Streams, LCM and TKH for conspiracy to defraud. The High Court (i) found that the transaction was a sham agreement camouflaging an illegal moneylending transaction and dismissed Pearl Streams' claim; and (ii) dismissed the defendants' counterclaims. Hence, the present appeals. Pearl Streams appealed against the entire decision ('Appeal 103') while Beverly Heights cross-appealed against the dismissal of its counterclaim ('Appeal 122'). The issues that arose were: (i) whether the High Court was wrong in not accepting the SPA when all parties agreed to its admissibility under Part A of the common agreed bundle of documents ('CABD'); (ii) whether the SPA was a moneylending transaction; (iii) whether the High Court was right in admitting TKH's statutory declaration ('SD'); (iv) whether TKH had the authority to execute the SPA and DMC on behalf of Beverly Heights; (v) whether KV Ong was negligent in handling the SPA transaction; and (vi) whether Pearl Streams was entitled to loss of prospective profit.

Held (allowing Appeal 103 in part; dismissing Appeal 122)
Per Ahmad Kamal Md Shahid JCA delivering the judgment of the court:

(1) Parties in the instant case agreed that, *inter alia*, the SPA, the DMC, the letters, the emails and the cheques were placed in Part A of the CABD. Once a document is placed in Part A, the contents as well as the truth is deemed to be proved. If the parties agree to place a document in Part A, it means that the maker need not be called because the authenticity of the documents is not in dispute. If there is a dispute as to the contents and/or its truth, it has to be placed in Part B. Placing it in Part C means that the authenticity, contents and its truth are not admitted. The maker of the documents must be called and the contents must be proved. In the present case, placing the SPA, the DMC, the letters, the emails and the cheques in Part A was fatal to the defendants' case. The High Court erred in holding the transaction as illegal, as it was contrary to the categorisation of the documents under Part A and this occasioned a serious miscarriage of justice that warranted appellate interference. (paras 28, 47 & 50)

(2) The High Court's finding that the SPA was an illegal moneylending agreement was against all the available documentary and witnesses' evidence. The defendants only relied on the buyback agreement and retention of RM57,500 as a purported feature of the illegal moneylending agreement. A discount of 10% of the purchased price, if the buyback option happened, as offered by TKH as Beverly Heights' agent, had nothing to do with Pearl Streams and did not *per se* qualify as or proved that this was a moneylending transaction. Pearl Streams purchased the said property and paid to the vendor's solicitor's, *ie*, Beverly Heights, client's account, not knowing that the said monies were released to TKH by KV Ong. The three-month option to repurchase did not happen. Beverly Heights failed to prove that Pearl Streams was a moneylender, as defined in s. 2 of the Moneylenders Act 1951. Since Pearl Streams was not a moneylender, the net effect was: (i) the presumption under s. 10OA of the Act had been rebutted; and (ii) the SPA was in reality a normal SPA, not one disguised as a moneylending transaction. (paras 51 & 53)

(3) TKH had made a statutory declaration of his wrongdoings but the SD had not mentioned Pearl Streams in the SD. The High Court had erred in wrongly admitting evidence on unfounded supposition of facts not related to the facts in question and had formed an inference that Pearl Streams and TKH perpetrated a fraudulent transaction against Beverly Heights. (paras 54, 57 & 61)

(4) KV Ong had followed instructions from Beverly Heights' representative, TKH, as confirmed by various documents, including emails and letters. TKH was the Group Chief Operating Officer and managing representative of Beverly Heights based on the letter dated 11 September

2017, bearing the letterhead of Beverly Heights. Since this letter was placed in Part A, the authenticity of the documents was not in dispute. TKH was therefore conferred with actual and apparent authority to give instructions to KV Ong pertaining to the transaction of Beverly Heights. TKH's actions in transacting the said property and in executing the SPA and the DMC bound Beverly Heights. (paras 64, 65 & 76)

(5) The SPA was executed with KV Ong serving as the vendor's solicitor for Beverly Heights and LCM representing Pearl Streams. KV Ong performed due diligence by requesting necessary company documents from Beverly Heights representative, which Pearl Streams' solicitors acknowledged. Upon execution and stamping of the agreement, KV Ong released the funds to Beverly Heights through TKH as per the instructions. Neither Pearl Streams nor LCM prevented this. KV Ong had also exercised reasonable care in verifying the authority of TKH and released the funds only after confirming the completion of the necessary formalities, including the delivery of vacant possession and the stamping of the SPA. Further, there was no legal duty imposed on KV Ong to raise suspicion that the buyback agreement, particularly as KV Ong was not involved in its preparation or execution. (paras 80, 82, 83 & 86)

(6) Pearl Streams claimed RM240,000 as loss of prospective profit from the proposed resale of the property to a third-party purchaser ('PW1'). However, the so-called prospective profit was merely speculative because: (i) no solicitor was engaged to prepare the SPA for the sale of the property; (ii) PW1 needed to obtain funding from the bank before the sale and purchase transaction could be carried out; (iii) there was no agreement signed by Pearl Streams and PW1 to confirm that the said property was sold to PW1; (iv) PW1 merely expressed an agreement to purchase the said property based on a gentleman's agreement; and (v) no deposit was paid by PW1 to the Pearl Streams for the purchase of the said property. (paras 99 & 102)

(7) Pearl Streams' appeal against Beverly Heights was allowed in part while the appeal against KV Ong was dismissed. Pearl Streams was entitled to: (i) a declaration that the SPA and the DMC executed were valid under law; (ii) a refund of RM502,500, being the purchase price paid; and (iii) interest and costs. (paras 103 & 104)

Case(s) referred to:

Badan Pengurusan Tiara Duta v. Timeout Resources Sdn Bhd [2014] 8 CLJ 133 CA ***(refd)***

Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***

Euroland & Development Sdn Bhd v. Supreme Code Land Sdn Bhd [2024] CLJU 1086 CA ***(refd)***

Melawangi Sdn Bhd v. Tiow Weng Theong [2020] 4 CLJ 1 FC ***(refd)***

Posco Daewoo Malaysia Sdn Bhd v. Tenaga Wan Bersaudara Sdn Bhd [2022] 7 CLJ 867 CA ***(refd)***

Rajamani Meyappa Chettiar v. Eng Beng Development Sdn Bhd & Ors [2016] 4 CLJ 510 CA ***(refd)***
Royal British Bank v. Turquand [1856] 119 ER 474 ***(refd)***
Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***
Sureshraj Krishnan v. PV Power Engineering Sdn Bhd & Anor [2022] CLJU 2746; [2022] 1 LNS 2746 CA ***(refd)***
Syarikat Rodziah v. Malayan Banking Bhd [2021] 5 CLJ 170 CA ***(refd)***
Thiagarajan S Rengasamy & Ors v. Sri Ganes Palaniapan [2024] CLJU 3305 CA ***(refd)***
Tiow Weng Theong v. Melawangi Sdn Bhd [2019] 2 CLJ 655 CA ***(refd)***
Yeo Ing King v. Melawangi Sdn Bhd [2017] 1 CLJ 512 CA ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 91, 92
Moneylenders Act 1951, ss. 2, 10OA
Rules of Court 2012, O. 34 r. 2(2)(d), (e)

(Civil Appeal No: B-02(NCvC)(W)-103-01-2023)
For the appellant - Ramesh Lachmanan & Saravanan Subramaniam; M/s Saravanan & Nasriq
For the 1st respondent - Imran Ismail & Anis Farhana Mohd Soji; M/s Melanie
For the 2nd respondent - Tan Chong Lii, Tan Lih Choon & Lee Sze Yin; M/s Tan Chong Lii & Co

(Civil Appeal No: B-02(NCvC)(W)-122-01-2023)
For the appellant - Imran Ismail & Anis Farhana Mohd Soji; M/s Melanie
For the 1st respondent - Ramesh Lachmanan & Saravanan Subramaniam; M/s Saravanan & Nasriq
For the 2nd respondent - unrepresented
For the 3rd respondent - unrepresented

The amicus curiae – Hafizah Johor Ariff Johor & Hafisol Yusoff; Director General of Insolvency

[Editor's note: For the High Court judgment, please see Pearl Stream Sdn Bhd v. Beverly Heights Resources Sdn Bhd & Anor [2023] CLJU 682; [2023] 1 LNS 682 (overruled in part).]

Reported by Lina E

JUDGMENT

Ahmad Kamal Md Shahid JCA:

Introduction

[1] There are two related appeals before this court which arise from the decision of the High Court delivered on 15 December 2022 after a full trial in the High Court at Shah Alam, Suit No BA-22NCvC-178-04/2018 (Suit 178), namely:

(i) appeal B-02(NCvC)(W)-103-01/2023 (Appeal 103) – by Pearl Streams Sdn Bhd/purchaser (plaintiff); and

(ii) appeal B-02(NCvC)(W)-122-01/2023 (Appeal 122) – by Beverly Heights Resources Sdn Bhd/the developer/vendor (first defendant).

[2] Having heard the appeals, examined the appeal records and considered the submissions by the parties, we decided to allow the plaintiff's appeal in Appeal 103 in part, and to dismiss the first defendant's appeal in Appeal 122. These grounds of judgment contain the full reasons for our decision.

The Parties

[3] Since there is an original action by the plaintiff and counterclaims by both defendants, the parties will be referred to in their capacity in the original action or by their original name to avoid confusion. Apart from the plaintiff and the first defendant in this case, there are some other parties who were part of the factual matrix, namely:

(i) KV Ong, Chua & Partners – the solicitor for the first defendant (the second defendant);

(ii) Loke Chee Min (LCM) – formerly an advocate and solicitor acting for the plaintiff. He is currently serving his sentence at Kajang Prison. LCM did not defend the case against him; and

(iii) Tong Kah Hoe (TKH) – the general manager of the first defendant, whose current whereabouts is unknown. An order for substituted service was obtained from this Honourable Court on 21 August 2023. Like LCM, TKH never appeared in court to defend the case against him.

[4] We noted that both LCM and TKH have been adjudicated bankrupt. We were also made to understand that sanctions from the Malaysian Department of Insolvency were obtained on 3 April 2023 at the High Court of Malaya in Kuala Lumpur.

Background Facts

[5] Sometime in 2017, So Eng Hong (PW2), a Director of the plaintiff, was contacted by a property agent who recommended some condominium units in a development called Imperial Residency. He was informed that the property was highly marketable, likely to be appreciated by 30% from its original price. PW2 then consulted the other Directors, who agreed to purchase one of the units in cash. The property in question is BDU-13-BDU-7, Unit B-13-10 Tingkat 13, Blok 2 Parcel No G-71, G-72 and G-73, Residency Imperial Seri Kembangan (the said property). The said property was owned by the first defendant, who is a property developer.

[6] The second defendant firm was the first defendant's panel of solicitors to handle, *inter alia*, conveyancing transaction for and on behalf of the first defendant. The second defendant is said to have acted for the first defendant

as the vendor's solicitor in respect of the sale of the said property to the plaintiff. At all material times, TKH, the first defendant's general manager, dealt on behalf of the first defendant to instruct and coordinate the sale transaction.

[7] PW2 then appointed LCM from the law office of CM Loke to attend the sale and purchase transaction. LCM then got in touch with the second defendant for that purpose. The draft of the sale and purchase agreement was forwarded to the second defendant, who had reverted with the approval of their client. PW2 had once enquired with the second defendant about who would represent the first defendant in the SPA and was informed that it was TKH.

[8] On 12 September 2017, the sale and purchase agreement (the SPA) was executed, with the plaintiff as the purchaser and the first defendant as the vendor. PW2 signed on behalf of the plaintiff in the presence of LCM. TKH signed on behalf of the first defendant. One Ong Kar Voi (DW4) from the second defendant firm attested his signature. The purchase price as provided for in the SPA was RM560,000.

[9] The same parties also executed a deed of mutual covenant (DMC) setting out the respective obligations regarding the use of, *inter alia*, common areas of the development.

[10] Simultaneous with the execution of the SPA and DMC, the plaintiff issued three cheques for the sums of RM150,000, RM57,500 and RM352,500 made payable to the second defendant as a payment towards the purchase price of the said property. However, only the cheques for RM150,000 and RM352,500 were banked into the account of the second defendant. PW2 took back the cheque for the amount of RM57,500. This amount represented a discount given by the first defendant. The sum of RM502,500 was then paid to TKH by the second defendant.

[11] On the same day the SPA and DMC were executed, TKH issued a letter dated 12 September 2017 (the 12 September 2017 letter) to the plaintiff using the letterhead of the first defendant, confirming that the full purchase price of the said property, amounting to RM560,000, had been fully settled.

[12] The 12 September 2017 letter also contained a proposal from the first defendant to buyback the said property within three months from the date thereof at the same purchase price of RM560,000 *via* a lump sum payment. For that purpose, the first defendant requested the plaintiff not to dispose of the said property within that three-month period and if the first defendant does not purchase the said property upon expiry of the said three-months period, the plaintiff is entitled to deal with it in its absolute discretion (buyback option).

[13] PW2 signed the 12 September 2017 letter to confirm the plaintiff's acceptance of the terms and conditions stated therein.

[14] The buyback option was, however, not exercised by the first defendant. Upon expiration of the three-month period, the plaintiff sought an interested buyer to purchase the said property. One Thong Wai Hoong (PW1) agreed to purchase the said property for RM800,000. Parties agreed to appoint LCM to act for them in the sale transaction with PW1.

[15] On 20 December 2017, LCM wrote to the first defendant to request information on the said property, to facilitate the sale by the plaintiff to PW1. Upon receipt of the letter, the first defendant replied *via* a letter dated 2 January 2018, expressing its astonishment at the purported sale as their record showed that the said property was in the name of the first defendant. The said property was neither sold to the plaintiff nor any other party. The first defendant also denied that the plaintiff was the legal and beneficial owner of the said property.

In The High Court

[16] The plaintiff filed Suit 178 against the defendants on the basis that they were jointly and severally liable to refund the sum of RM560,000, being the purchase price of the said property and an additional sum of RM240,000 for the loss of profit that they would have made on the resale of the said property to PW1. The plaintiff also sued the second defendant for negligence (*albeit* that the plaintiff's own solicitor was LCM).

The Defence Of The First Defendant

[17] The first defendant denied that TKH was authorised to sell its properties. Therefore, the actions of TKH cannot bind the first defendant, and it remained the lawful owner of the said property.

[18] The purported sale of its property by TKH was, in fact, a moneylending transaction disguised as a sale and purchase of property. TKH had orchestrated the same pattern of fraudulent transactions in three other companies where he was employed. Being an illegal moneylending transaction, the SPA is void and unenforceable.

The Defence Of The Second Defendant

[19] The second defendant contended that the cause of action in negligence by the plaintiff is legally untenable. The second defendant took the position that the plaintiff was not their client and they owed no duty of care towards the plaintiff. The second defendant maintained that they represented the first defendant only in the SPA, as they were on its panel of solicitors. The second defendant contended that they did not find anything untoward or irregular in the circumstances regarding the transaction. In any event, they had exercised reasonable care and skill, and taken all the necessary steps in handling the transaction pertaining to the sale of the said property to the plaintiff.

[20] The second defendant also contended that the plaintiff had not shown that the alleged loss was due to the purported negligence of the second defendant.

The Counterclaims

[21] Both the defendants, in turn, sued the plaintiff, LCM and TKH in a common cause of action of fraud and conspiracy to defraud. In the counterclaim, the defendants claimed that the plaintiff, LCM, and TKH conspired to commit fraud by orchestrating a sham agreement to camouflage a moneylending transaction and that this has occasioned loss to them, and they therefore sought to be compensated in damages.

Findings Of The Learned High Court Judge

[22] At the end of the trial, the learned High Court Judge (HCJ) found, as follows:

(i) on the issue of whether the SPA was a moneylending transaction in disguise, the HCJ's findings were that:

(a) the conveyance of the said property was a sham agreement of which PW2 was aware. PW2 was far from the innocent purchaser that he made himself out to be. It was an ingenious arrangement entered into to camouflage the moneylending transaction; and

(b) in the circumstances, the declarations sought by the plaintiff that the SPA and DMC entered into are valid and enforceable, and that it is the legal and beneficial owner of the said property cannot be allowed;

(ii) on the issue of whether TKH had the authority to execute the SPA and DMC on behalf of the first defendant, the HCJ found as follows:

(a) given the earlier finding that it is an illegal transaction and hence unenforceable, the question of TKH's authority to bind the first defendant in executing the SPA and DMC is now irrelevant. The agreements cannot be enforced against the first defendant;

(iii) on the question of whether the second defendant was negligent in handling the SPA and DMC transactions, the HCJ's findings were:

(a) there is no relationship of proximity between the plaintiff and the second defendant to impose a duty of care to be owed by the second defendant to it. The essential ingredient of the duty of care was not satisfied;

(iv) on the counterclaim predicated on the tort of conspiracy to defraud/injure, the HCJ found that:

(a) it is apparent that the defendants are relying on the unlawful means of conspiracy, as both rely on the fact of the illegal moneylending transaction;

(b) the plaintiff and TKH conspired to benefit themselves and not to injure the defendants. It was to serve their own ends of benefiting monetarily in a disguised moneylending scheme. Both defendants were unwittingly used in the fraudulent transaction. If at all, there was injury caused to them, it was incidental rather than intentional;

(c) as to the knowledge and role of LCM in the fraudulent transaction, the evidence is less cogent than that of the plaintiff and TKH;

(d) there was no evidence led at the trial on the issue of loss or damage resulting from the alleged tort;

(e) in its counterclaim premised on this tort, the first defendant seeks the relief for an order that the SPA be cancelled and declared unenforceable;

(f) this order can be allowed, but as a consequence of the dismissal of the plaintiff's claim, the first defendant sustained no loss as the SPA, being an illegal moneylending transaction, cannot be enforced. The said property remained with the first defendant; and

(g) the second defendant, on the other hand, apart from its oral assertion that it suffered a loss in reputation, did not furnish convincing evidence to substantiate the loss. As a result, the counterclaim could not be allowed.

The Appeals

[23] The decision of the learned HCJ gave rise to these two appeals before us. As mentioned before, the plaintiff, *via* Appeal 103, appeals against the whole decision of the learned HCJ. Meanwhile, the first defendant, *via* Appeal 122, appeals against part of it, *ie*, the decision of the learned HCJ in dismissing the first defendant's claim for the damages prayed for in the counterclaim. The second defendant, however, did not appeal against the said decision of the learned HCJ.

Appeal 103

[24] Briefly, the plaintiff's grounds of appeal against the first defendant are:

(i) the learned HCJ failed to hold that the plaintiff had succeeded in establishing their case against the defendants on a balance of probabilities;

(ii) the learned HCJ had erred in holding that the SPA between the plaintiff and the first defendant is an illegal moneylending agreement;

(iii) the learned HCJ was wrong in not accepting the SPA when all parties agreed to its admissibility under the common agreed bundle of documents (CABD) (Part A);

(iv) the learned HCJ's fact-finding is against all the available documentary and witness evidence; and

(v) the learned HCJ's failure to judicially appreciate that there were solicitors involved for both parties (the plaintiff and the first defendant) and that this makes the allegation of moneylending inference seriously flawed.

[25] As against the second defendant, the plaintiff's complaints are:

(i) the learned HCJ is wrong in law and fact in not holding that the purchase price of RM560,000 to the second defendant is not a "stakeholder sum"; and

(ii) the learned HCJ was wrong in law and fact in not holding that the second defendant was negligent when he released the stakeholder sum to the first defendant's agent, representative or employee.

Appeal 122

[26] As for Appeal 122, at the outset, the first defendant submits that this appeal should be allowed on the following three main grounds, *ie*:

(i) there was a conspiracy between the plaintiff, LCM and TKH to cause injury and/or losses to the first defendant to execute illegal moneylending transactions;

(ii) the first defendant suffered irreversible losses and/or damages due to the act of conspiracy of the plaintiff, LCM and TKH; and

(iii) there were no direction and no assessment of damages for conspiracy which was conducted by the learned HCJ.

Our Findings

Appeal 103

[27] We will first deal with Appeal 103 filed by the plaintiff.

Whether The Learned HCJ Was Wrong In Not Accepting The SPA When All Parties Agreed To Its Admissibility Under Part A Of The Common Agreed Bundle Of Documents (CABD)

[28] Parties in the instant case agreed that the following documents are to be placed in Part A of the CABD:

(a) salinan perjanjian jual beli di antara Beverly Heights Resources Sdn Bhd dan Pearl Streams Sdn Bhd bertarikh 12 September 2017 (*ie,* the SPA).

(b) salinan DMC di antara Beverly Heights Resources Sdn Bhd dan Pearl Streams Sdn Bhd bertarikh 12 September 2017.

(c) salinan cek-cek kepada Tetuan K.V. Ong, Chua & Partners bertarikh 12 September 2017.

(d) salinan surat daripada Tetuan Law Office of CM Loke kepada Tetuan K.V. Ong, Chua & Partners bertarikh 20 September 2017.

(e) salinan surat daripada Tetuan Law Office of CM Loke kepada Tetuan K.V. Ong, Chua & Partners bertarikh 5 September 2017.

(f) email di antara Thomas TKH dan KV Ong, Chua & Partners bertajuk Imperial Residency (SPA and DMC) masing-masing bertarikh 5 September 2017 dan 29 Ogos 2017.

(g) email di antara Loke Chee Min dan KV Ong, Chua & Partners mengenai SPA dan DMC bertarikh 5 September 2017 dan 7 September 2017.

(h) email di antara Loke Chee Min dan KV Ong, Chua & Partners bertarikh 5 Mac 2018.

(i) kad nama Loke Chee Min dari Tetuan Yap Loke & Loh.

(j) salinan surat daripada Beverly Heights Resource Sdn Bhd bertarikh 11 September 2017.

(See: Rekod Rayuan Jilid 3 Bahagian C(1)).

[29] The plaintiff submits that the documents from Part A of the CABD, *ie*, the existence, contents and making of these documents, are accepted as the truth by all parties. Therefore, the documents are deemed to be accepted and ought not to be deliberated any further, as they immediately rebut the issue of illegality.

[30] The plaintiff further submits that by placing the SPA and the letters connected thereto in Part A, it is not open to the first defendant to contend that it is a sham, *ie*, moneylending transaction in those circumstances.

[31] The first defendant, on the other hand, contended that placing a document in Part A only means the parties agree on its authenticity and the contents as they appear on the face of the document. While authenticity and the physical contents are admitted, a party wishing to rely on the truth of the statements within a Part A document may still need to lead evidence to prove the truth, unless the truth is specifically agreed upon separately.

[32] The first defendant further submitted that even with Part A status, the court can and must examine enforceability, legality and public policy implications, especially where sham arrangements or illegal moneylending are alleged.

[33] The crux of the issue is whether the SPA under Part A of the CABD can be challenged and/or contested as an illegal or sham agreement by the first defendant.

A The Law

[34] The classification of trial documents into Parts A, B, and C is governed by O. 34 r. 2(2) of the Rules of Court 2012 (ROC), the material portion of which reads as follows:

B Pre-trial case management when directed by the Court (O. 34 r. 2)

(2) At a pre-trial case management, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical C disposal of the action or proceedings, including:

...

(c) the period within which the parties are to file a bundle of all documents that will be relied on or referred to in the course of the trial by any party, including documents referred to in the witness D statement of a witness;

(d) *the contents of the bundle of the documents referred to in subparagraph (c) shall be agreed on between all parties as far as possible and this bundle of agreed documents shall be filed by the plaintiff and marked as Part A;*

E (e) if the parties are unable to agree on certain documents, those documents on which agreement cannot be reached shall be included in separate bundles and each such bundle shall be filed by the plaintiff and marked as follows:

(i) *Part B – documents where the authenticity is not disputed but the contents* F *are disputed;*

(ii) Part C – documents where the authenticity and contents are disputed;

(emphasis added)

[35] Further, 'Arahan Amalan Hakim Besar Malaya Bilangan 1 Tahun G 2020 Pengurusan Kes Sivil Sebelum Bicara' dated 31 January 2020 provides as follows:

4.4 Pengurusan Kes Secara e-Review Kali Kedua di Hadapan Pegawai Kehakiman

(b) Pada pengurusan kes secara e-Review kali kedua, Pegawai H Kehakiman hendaklah memberikan arahan Pengurusan Kes Sebelum Bicara selaras dengan Aturan 34 Kaedah 2(2) KKM 2012 termasuklah dengan menjana Borang e-Review 4 (Persediaan Bicara) (Lampiran A4) untuk dipatuhi oleh pihak-pihak dalam tempoh tiga puluh (30) hari dari tarikh pengurusan kes secara I e-Review kali kedua. Arahan tersebut termasuklah memfailkan dan menyampaikan dokumen-dokumen yang berikut:

(i) Ikatan Pliding;

(ii) Ikatan dokumen yang berikut:

(a) Bahagian A: Dokumen yang keesahannya dan kandungannya dipersetujui;

(b) Bahagian B: Dokumen yang keesahannya tidak dipertikaikan tetapi kandungannya dipertikaikan; dan

(c) Bahagian C: Dokumen yang keesahan dan kandungannya dipertikaikan.

[Ikatan dokumen hendaklah disusun mengikut kronologi dan dengan muka surat yang berturutan. Ikatan dokumen hendaklah difailkan secara bersama ("common bundle"). Sekiranya ikatan dokumen bersama tidak dapat difailkan dalam masa yang ditetapkan Hakim boleh mengarahkan pemfailan secara berasingan].

...

(emphasis added)

[36] Based on the above, we find that O. 34 r. 2(2)(d) of the ROC does not explain what is meant by a document where contents are agreed between the parties, but it may be deduced from the following para. (e)(i) that Part A documents are those documents that the parties have agreed are authentic, and the contents of which documents are not disputed between the parties. One of the effects of placing a document in either Part A or Part B is that the requirements for formal proof of the existence of the document are dispensed with.

[37] The effect of placing a document into Part A has been considered in several cases.

[38] In *Yeo Ing King v. Melawangi Sdn Bhd* [2017] 1 CLJ 512; [2016] 6 MLRA 672; [2016] 5 MLJ 631; [2016] 5 AMR 405 (*Yeo Ing King*), the Court of Appeal, by a majority decision, stated as follows:

Contents and Truth of Contents

[19] It is a misconception to think that for the documents in Part A, "everything is agreed". Rule 2(2) (d) of O. 34 only speaks of contents of the documents. It does not speak of the truth of the contents. The question is, what does the rule envisage when it requires agreement on the contents of the documents? Does it mean agreement on the truth of the contents, or does it only mean agreement on the fact that the documents contain what they purport to contain, *ie*, the contents as they appear on the face of the documents?

[20] There is of course a difference between agreeing on the contents of a document and agreeing on the truth of the contents. If I agree that a document contains a statement that is defamatory of me, it does not necessarily follow, as night follows day, that I agree to the truth of the statement.

A Our View On r. 2(2)(d)

[21] Having given careful consideration to the matter, *we take the view that what r. 2(2)(d) envisages is only agreement on the contents of the documents and not the truth of the contents, unless agreed by the parties*. In the present case, there was no such agreement between the plaintiff and the defendant at the
B pre-trial case management. *Therefore, the agreement by the parties to place the documents in Part A of the BOD was only an agreement that the documents contained the impugned defamatory statements and not an agreement that the defamatory statements were true of the plaintiff.*

[22] It is true that it was the plaintiff itself who chose to include the three
C defamatory statements in Part A of the BOD, but it will be stretching the imagination to suggest that by doing so the plaintiff had admitted to the truth of the statements. That is wholly illogical and runs counter to the pleadings and the plaintiff's object of filing the claim in the first place.

[23] *Order 34 r. 2 is not designed to be a trap for the unwary to fall into. It is designed to simplify the procedure in a civil trial and to expedite the disposal of cases.*
D *Whether the statements were defamatory and whether they were the truth were matters that the court had to decide. The flaw in the defendant's argument is that it equates contents with truth.*

(emphasis added)

[39] Both the plaintiff and the defendant in that case sought for leave to
E appeal to the Federal Court. However, their applications were dismissed.

[40] Based on the above, the majority judgment of the Court of Appeal sought to draw a distinction between the contents of a document and the truth of the contents of that document. Thus, the emplacement of a document in Part A does not amount to an admission of the truth of the contents of the
F document.

[41] On the other hand, in the case of *Tiow Weng Theong v. Melawangi Sdn Bhd* [2019] 2 CLJ 655; [2018] 6 MLRA 52; [2018] 6 MLJ 761; [2018] 5 AMR 465 (*Tiow Weng Theong*) the Court of Appeal considered the earlier decision in *Yeo Ing King* (*supra*) and observed that the majority of the court
G in that earlier case had made a distinction between an agreement between the parties on the contents of documents placed in Part A, and the truth of the contents of such documents. The court, however, departed from its earlier decision and held that once a document is placed in Part A, then the parties are taken to have agreed on the truth of such documents. The unanimous
H judgment of the court stated as follows:

[43] Our construction of O. 34 r. 2(2)(d) and (e) which is consonant with the dissenting judgment of Hamid Sultan Abu Backer JCA, is that *Part A documents, which prescribe that both the authenticity and the contents of documents are agreed, must mean that the truth of the content of the documents are agreed upon*
I *between the parties. Otherwise they would simply be placed in Part B.*

[44] This begs the question as to whether there is any distinction between agreement on the contents of a document and the truth of the contents of that document. This is perhaps best answered or illustrated by way of an example. Let us say that the document in question contains the following statement:

> I saw Mr X at the meeting on the 5 April 2018 and I heard him state that the profits of the company for the previous year amounted to RM12 million.

[45] If the document were to be placed in Part A then that would mean that the person who authored the document need not be called to testify as the authenticity of the document is not in question.

[46] If the parties agree as to content, then it means that the party producing the document and the opposing party both agree that the content of the document is not in dispute.

[47] What then is not in dispute? It can only mean that the statement that "I saw Mr X at the meeting on 5 April 2018 and I heard him state that the profits of the company for the previous year amounted to RM12 million". is agreed or not disputed.

[48] That in turn can only mean that the parties agree or do not dispute that the author of the document saw Mr X at the meeting on 5 April 2018 and heard him state that the profits for the previous year amounted to RM12 million.

[49] If the opposing party agrees or accepts this content, then it must follow that the fact of the matters stated in the document are accepted and agreed. If the fact of the matters stated there are accepted and agreed this means that the truth of the contents has also been accepted.

[50] In other words, there is no tangible or discernible distinction between agreement or a lack of dispute as to the contents of the document, and the truth of the contents of the document.

[51] *Accordingly, a Part A document necessarily refers to agreement not only on authenticity but on the truth of the content of the document.*

(emphasis added)

[42] The case then went on appeal to the Federal Court, and is reported as *Melawangi Sdn Bhd v. Tiow Weng Theong* [2020] 4 CLJ 1; [2020] 2 MLRA 391; [2020] 3 MLJ 677; [2020] 2 AMR 505 (*Melawangi*). In allowing the appeal, the Federal Court had set aside the Court of Appeal's decision on a factual error but left this very issue of categorisation of documents unanswered, despite being raised as a question of law for which leave was granted.

[43] In the case of *Thiagarajan S Rengasamy & Ors v. Sri Ganes Palaniapan* [2024] CLJU 3305; [2024] MLRAU 341; [2024] AMEJ 3237 (*Thiagarajan*); the Court of Appeal held:

> [28] We are of the view that *there does not exist any distinction between agreeing on the contents of a document, and the meaning of the contents of such document. Once a document is agreed as authentic and no dispute arises as to its contents, it must necessarily follow that the parties have agreed that the meaning of the words contained in the document is representative of the truth. If the meaning is disputed, then the document must be placed in Part B, not Part A.*
>
> [29] We are unable to accept as correct any notion that somehow the Rules of Court 2012 must be applied differently with regards to an action for defamation. This contention is supported neither by principle nor authority.
>
> [30] *With the four Facebook postings in the present case having been placed in Part A, it must follow that the appellant plaintiffs have accepted that, even if the statements in the postings may have the tendency of reducing their reputations in the minds of the reasonable, right-thinking man* – the hypothetical man on the Cheras MRT – the statements are nonetheless correct in that they are representative of the truth. Such being the case, the appeal must necessarily fail. The appeal is thus dismissed with costs of RM20,000, such costs to be subject to an allocator.
>
> (emphasis added)

[44] Leave to appeal to the Federal Court was dismissed on 26 March 2025 *vide* leave application no. 08(f)-417-12/2024(W), which is reported as [2025] CLJU(O) 4; [2025] MLRAU 158. This shows that this issue has also not been decided at the Federal Court level. Therefore, we have only the Court of Appeal's decisions at hand.

[45] However, as deliberated earlier, we find that there are conflicting judgments of the Court of Appeal on this issue, as follows:

(i) in *Yeo Ing King* (*supra*), the majority of the court distinguished an agreement on the contents of a document, and the truth of the contents of such a document, ruling that the emplacement of a document containing a statement said to be libellous into Part A would not defeat an action for defamation; and

(ii) the Court of Appeal in *Thiagarajan* (*supra*) and *Tiow Weng Theong* (*supra*) came to the contrary view, holding that there was no meaningful distinction between agreeing on the contents of a document and agreeing on the truth of its contents.

[46] As there are conflicting Court of Appeal judgments regarding the effect of categorising a document in Part A, whether it amounted to admission of the truth of its contents or merely constituted an agreement on its content, we are at liberty to choose which judgment is to be adopted. (See: judgment

of the Federal Court delivered by Peh Swee Chin FCJ (as he then was) in *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645; [1997] 1 MLRA 653; [1998] 1 MLJ 1 on pp. 12 to 13).

[47] Having regard to the matters referred to above, we decided to follow the decision of the Court of Appeal in *Tiow Weng Teong* (*supra*) and *Thiagarajan* (*supra*). In our view, once a document is placed in Part A, the contents as well as the truth is deemed to be proved. If the parties agree to place a document in Part A, it means that the maker need not be called because the authenticity of the documents is not in dispute. If there is a dispute as to the contents and/or its truth, it has to be placed in Part B. Placing it in Part C means that the authenticity, contents, and its truth are not admitted. The maker of the document must be called, and the contents must be proved. In the present case, we find that placing the SPA, DMC, the letters, emails and cheques in Part A was fatal to the defendant's case.

[48] We agree with the plaintiff's submission that if the defendants decided to take a different stance in the trial, contradicting their placement of the document, it was a self-inflicted error of their own making. It is a profound self-contradiction that will not find favour in legal parlance.

[49] If the learned HCJ had kept the legal principles at the forefront of her judicial analysis, then it is very likely that Her Ladyship might have come to a different conclusion.

[50] Therefore, we find that in the circumstances, the learned HCJ erred in holding the transaction as illegal, as it was contrary to the categorisation of the document under Part A, and this has occasioned a serious miscarriage of justice that warranted appellate interference.

Whether The SPA Was A Moneylending Transaction

[51] Notwithstanding our finding above that the learned HCJ was wrong in not accepting the SPA where all parties agreed to its admissibility under Part A of the CABD, it is nevertheless necessary for the sake of completeness for us to deal with the issue of whether it was a moneylending transaction. On this issue, we find the learned HCJ's finding that the SPA is an illegal moneylending agreement was against all the available documentary and witnesses' evidence.

[52] The learned HCJ held as follows in concluding that the SPA is an illegal moneylending transaction.

> [42] I do not find his evidence plausible viewed against the other circumstances in which the property was transacted. On the totality of the evidence, I find the conveyance of the said property to be a sham agreement of which PW2 himself was aware. PW2 was far from being an innocent purchaser he made himself out to be. It was an ingenious arrangement entered into, to camouflage the moneylending transaction.
>
> ...

A

> [45] Pearl Streams, having taken the position that the parties enter in to a genuine sale and purchase agreement of the said property, not surprisingly, led no evidence to show compliance with the provisions of the Act.
>
> ...
>
> [49] In view of my finding that it is an illegal transaction and hence unenforceable, I do not find it necessary to deal with this issue. Thequestion of TKH's authority to bind Beverly Heights in executing the SPA and DMC, is now irrelevant. The agreements cannot be enforced against Beverly Heights.

C **[53]** Having perused the evidence produced before us, particularly the SPA and DMC, we find that the learned HCJ had erred in holding that the SPA was an illegal moneylending transaction. Our reasons are as follows:

(i) the SPA and DMC between the parties can be found on pp. 501 to 546 of 'Rekod Rayuan Jilid 3 Bahagian C(1)'. These documents were placed in Part A of the CABD, where all parties accept the existence, contents and making of these documents;

D

(ii) both the SPA and DMC are standard documents. They were duly stamped and witnessed by respective lawyers, *ie*, the second defendant and LCM;

E

(iii) the learned HCJ failed to judicially appreciate the involvement of the solicitors for both parties. This can be seen on pp. 551 to 553 of the 'Rekod Rayuan Jilid 3 Bahagian C(1)', which shows the email threads from 29 August 2017 until 7 September 2017 between the plaintiff's counsel and the first defendant's counsel;

F

(iv) the email dated 7 September 2017 from the first defendant's solicitor, Jerrine Tee stated:

> As requested, please refer to the details, as follows, being our client's person in charge, for your further action:
>
> Name: Tong Kah Hoe
> NRIC No: 650728-10-7113

G

(See: p. 555 of Rekod Rayuan Jilid 3 Bahagian C(1));

(v) with the above email, it is expressly admitted that it was the first defendant's request to the plaintiff's counsel (LCM) to deal with TKH pertaining to the transaction which led to the execution of the SPA;

H

(vi) at no material time did these lawyers protest or object to the agreement;

I (vii) the learned HCJ's findings that the transaction between the plaintiff and the first defendant is a disguised moneylending transaction due to the buyback agreement cannot stand. By virtue of ss. 91 and 92 of the Evidence Act 1950, further terms can be reduced in writing;

(viii) as far as the price of RM560,000 is concerned, we find that the second defendant, as a panel lawyer, should not have executed the agreement if the price is far too low, since he is expected to alert the first defendant. As a panel lawyer, the second defendant is expected to know the standard price for each unit;

(ix) had the learned HCJ considered that the buyback agreement in any way did not unlawfully profit the plaintiff and the plaintiff's reliance on the panel lawyer's involvement cannot raise any suspicion, we are of the view that the learned HCJ's finding that it is a moneylending agreement was not the product of proper and reasonable judicial appreciation. In short, the learned HCJ erred in rejecting the transaction as genuine;

(x) we should perhaps mention that during cross-examination of the plaintiff's witness (PW2), both the first defendant's and second defendant's counsel did not raise any questions concerning the plaintiff's profession. Specifically, it was not put to PW2 that the plaintiff was involved in the illegal moneylending business. Both defendants' counsel only focused their attention on the purported RM57,500 payment that was returned to the plaintiff's lawyer, LCM on the strength of the subsequent buyback clause;

(See: pp. 226-315 of Rekod Rayuan Jilid 2 Bahagian B (2))

(xi) we are of the view that in the absence of any suggestion during cross-examination that the plaintiff was involved in illegal moneylending, the entire defence of the first defendant that the transaction is an illegal moneylending transaction is unsupported and/or is a mere allegation without any credential basis;

(xii) further, nowhere in the first defendant's defence did the first defendant plead the relevant and critical provisions of the Moneylenders Act 1951;

(xiii) based on the Court of Appeal decision in *Sureshraj Krishnan v. PW Power Engineering Sdn Bhd & Anor* [2022] CLJU 2746; [2022] 1 LNS 2746; [2023] 2 MLRA 186; [2023] 1 MLJ 632, the burden of proving that this was a moneylending transaction is on the first defendant. In this regard, the Court of Appeal held as follows:

> **[38] The parties who alleges the appellant is a moneylender are the respondents. Therefore, the burden of proving the appellant is a moneylender falls on the respondents**. On this issue, we find that the Respondents were making a bare allegation. There was no evidence adduced by the Respondents to prove that the Appellant had carried on or advertised or announced himself or held himself

A as carrying the business of moneylending as a moneylender. The fact that the Appellant lent money to the Respondents does not make him a moneylender;

(emphasis added)

(xiv) in the present case, the defendants only relied on the buyback B agreement and retention of RM57,500 as a purported feature of the illegal moneylending agreement;

(xv) further, we are of the opinion that a discount of 10% of the purchase price if the buyback option happens, as offered by TKH as the first defendant's agent, has nothing to do with the plaintiff and/or does not C *per se* qualify as or prove that this was a moneylending transaction;

(xvi) on the facts, the plaintiff purchased the said property and paid to the vendor's solicitor's (first defendant's) client's account, not knowing the said monies were released to TKH by the second defendant. On the facts, the three-month option to repurchase did not happen; D

(xvii) in addition to that, we also find that there is not even an iota of evidence of repayment by TKH to the plaintiff. Payment for the purchase was made to the second defendant on behalf of the vendor, *ie*, the first defendant;

E (xviii) based on the facts and circumstances of this case, we find the first defendant has failed to prove that the plaintiff was a moneylender as defined in s. 2 of the Moneylenders Act 1951;

(xix) consequently, we find the learned HCJ had erred in law and fact when she refused to consider the submission put forth by the plaintiff on F s. 2 of the Moneylenders Act 1951 and failed to make a finding that the plaintiff is not a moneylender. For the same reason, we also find that the learned HCJ erred in concluding the SPA to be an illegal moneylending transaction;

G (xx) since it is our finding that the plaintiff is not a moneylender, the net effect is:

(a) the presumption under s. 10OA of the Moneylenders Act 1951 has been rebutted;

(b) the SPA was in reality a normal sale and purchase agreement, H not disguised as a moneylending transaction; and

(xxi) we find that the erroneous fact-finding and wrong application of the burden of proof by the learned HCJ had occasioned a serious miscarriage of justice. This has further resulted in a wrong conclusion by the learned HCJ, who held that the plaintiff had failed to prove I their case on the balance of probabilities.

Whether The Learned HCJ Was Right In Admitting TKH's Statutory Declaration (SD)

[54] TKH had apparently made an SD of his wrongdoings witnessed by Mr Mathew Thomas Philip (DW5), a senior member of the Bar and a Commissioner for Oaths.

[55] For ease of reference, the said SD is reproduced as follows:

FORM OF DECLARATION

Re: Fictitious Documents related to Timbunan Tunas Development Sdn Bhd and Euroland Development Sdn Bhd

I, Mr Tong Kah Hoe (I/C No.: 650728-10-7113) do solemnly and sincerely declare the following:

1. I am a gambling addict;
2. I was given gambling chips in various casinos to gamble by giving various persons fictitious receipts from two companies namely Timbunan Tunas Development Sdn Bhd and Euroland & Development Sdn Bhd to give the impression that they have paid for the properties of the companies when in fact, they have not paid for the properties;
3. These persons who have been issued such receipts are persons connected or associated to a gambling junket or are loan sharks. These persons whose names appear here have not paid the cash to the companies but arranged for gambling chips to be issued to me in exchange.
4. I have done these acts because of my gambling habit and confirm that the companies stated above are not involved in any way; and

I make this solemn declaration conscientiously believing the declaration to be true, and by virtue of the Statutory Declarations Act 1960.

Subscribed and solemnly declared by the abovenamed,

at Kuala Lumpur

in the State of Wilayah Persekutuan

this 18 OCT 2018 20

PESURUHJAYA SUMPAH
W 661
TAN KIM CHOOI
1.1.2018-31.12.2018
MALAYSIA

(See: **Page 577 of Rekod Rayuan Jilid 3 Bahagian C (3)**)

[56] DW5 during his cross-examination has stated as follows:

SS : Ok. This declaration, purported declaration does not mention anything about Pearl Stream, the plaintiff in the matter. The plaintiff in the matter is –

MTP : That is correct.

SS : Yes. So this is in relevance to other events. You agree with me?

MTP : I'm not sure whether, so if you asked me the question, yes, it is relevant to establish that the Tong Kah Hoe said these things to me and that's about what the relevance is.

SS : Yes, sir. But Tong Kah Hoe did not mention Pearl Stream, did not mention anything about Pearl Stream.

MTP : I agree.

At page 483:

SS: Ok. I'm putting to you that this purported confession has no bearing in this case. Would you agree?

MTP : I'm not sure how to answer that.

SS : Alright, I'm just asking.

MTP : Yes.

(See: p. 478 of Rekod Rayuan, Jilid 2 Bahagian B(2)).

[57] Having perused the SD and DW5's evidence, we find that TKH had not mentioned the plaintiff in the SD. In fact, DW5 confirms that the contents of the SD did not relate to the plaintiff.

[58] Further, in para. 3 of his SD, TKH said the individuals involved with regard to Timbunan Tunas Development Sdn Bhd and Euroland & Development Sdn Bhd did not pay cash, but exchanged with gambling chips. On the facts, the case here is about Imperial Residency for which the plaintiff paid cash to the second defendant, *ie*, the first defendant's panel solicitor. The purchase price was paid to the second defendant and not to TKH. We find that these facts have nothing to do with the said SD or evidence of DW5. In fact, DW5's evidence did not touch on or have any relevance to the plaintiff's case.

[59] All in all, we find the said SD has no information relating to the plaintiff. There is nothing linking it to the SPA made between the first defendant and the plaintiff. The said SD was attached with a list of names connected to some gambling activities between them and TKH, but the plaintiff is not one of them.

[60] On this issue, the learned HCJ had stated in her grounds of judgment as follows:

> [36] TKH himself had made a statutory declaration (SD) of his wrongdoings, witnessed by Mr Mathew Thomas Philip (DW5), a senior member of the Bar. The authenticity of the SD (B3-5) was not disputed. DW5 testified that Beverly Heights was his client. Sometime in October 2018, he was contacted by the one of the directors of Euro Holdings Berhad. He was informed that TKH, the Chief Operations Officer had dealt with the properties belonging to the subsidiaries of Euro Holdings Berhad because of his gambling activities. To understand the issue better, DW5 then requested TKH to present himself at the office of the former.

> [37] TKH voluntarily confessed to DW5 that he had falsified documents in relation to properties belonging to Euroland Development Sdn Bhd and Timbunan Development Sdn Bhd in exchange for gambling chips. DW5 then prepared a statutory declaration based on TKH's admission to which TKH signed. Apart from DW5, the SD was also witnessed by a Commissioner for Oaths. Whilst ordinarily I would be circumspect in accepting statements of persons who are not present at the trial, the contents of the SD here was prepared by DW5. He said he prepared the SD based on TKH's admission during the interview with the latter. I would therefore accept the contents of the SD as evidence of the TKH's activities. The evidence of TKH's gambling habit was also corroborated by the evidence of DW3, his uncle.

[61] Based on the above, we find that the learned HCJ had erred in wrongly admitting evidence on unfounded supposition of facts not related to the facts in question when Her Ladyship relied on the said SD and DW5's evidence and formed an inference that the plaintiff and TKH perpetrated a fraudulent transaction against the first defendant.

Whether TKH Had The Authority To Execute The SPA And DMC On Behalf Of The First Defendant

[62] The first defendant submitted that TKH had, without the first defendant's authorisation, unlawfully dealt with the plaintiff for a sale and purchase transaction of the said property and unlawfully instructed the second defendant to prepare the SPA and DMC for the said property.

[63] Having perused the evidence produced before this court, we find that throughout the process, the second defendant followed instructions from the first defendant's representative, TKH, as confirmed by various documents, including emails and letters dated between 29 August 2017 and 11 September 2017.

[64] At all material times, the second defendant had acted in accordance with the written instructions and/or confirmations of the first defendant's representative, *ie*, TKH, who was the "group chief operating officer and managing representative" of the first defendant based on the letter dated 11 September 2017 bearing the letterhead of the first defendant. Notwithstanding the statement of defence of the first defendant as well as witness statements of the first defendant's witnesses, namely Yap Kar Hoo (DW1) and Dato' Tong Yun Mong (DW3) had stated that TKH was the first defendant's general manager and denied that he has the authority to represent the company, however, based on our earlier finding that this letter was placed in Part A, the authenticity of the documents is not in dispute. As such, TKH was conferred with actual and apparent authority to give instructions to the second defendant pertaining to the transaction of the first defendant.

[65] In the case of *Posco Daewoo Malaysia Sdn Bhd v. Tenaga Wan Bersaudara Sdn Bhd* [2022] 7 CLJ 867; [2023] 1 MLRA 386; [2022] 6 MLJ 516, the Court of Appeal held that mere appearance of authority on part of the agent was sufficient to establish the agent was conferred with authority when it held as follows:

> *[36] When Chua invited the appellant to the Ampang Warehouse to discuss about the trade credit financing arrangements for the respondent which the respondent claims it did not know, Chua gave the appellant, his name card with the respondent's name during the meeting*. Chua operated from the Ampang Warehouse, distributed the respondent's name card, occupied the main office in the Ampang Warehouse and was representing the respondent to import, store and sell the respondent's cars there. *Although Chua's name card could not carry the title of a Chief Executive Officer, we are of the considered view that Chua possessed the requisite powers and authority to enter into the CFAs and AA on behalf of the respondent*.
>
> [37] Chua, in support of the application to secure the trade credit financing from the appellant, furnished the appellant with the respondent's Audited and Financial Reports for the year 2010 until 2013 which was provided by Mr Jusoh. Chua also affixed his title as the respondent's Chief Executive Officer and used the respondent's company stamp to stamp and execute the CFA's, AA and the confirmation documents. To date, there are no police reports lodged that Chua fraudulently or dishonestly procured these documents company stamp and use them for improper purposes.
>
> [38] Support can be found in *Chan Yin Tee v. William Jacks & Co (Malaya) Ltd* [1964] 1 MLRA 479; [1964] 1 MLJ 290 where Thompson LP held that any person irrespective of his competency to contract may become an agent and that does not affect his principal's liability to third parties.
>
> [39] Further, in *KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd* [1996] 2 CLJ 611; [1996] 1 MLRA 178; [1996] 1 MLJ 233; [1996] 1 AMR 839, Gopal Sri Ram JCA (as he then was) in dealing with ss 138, 139, 140 of the Contracts Act 1950 ("CA 1950"), held that *there is no requirement that an appointment of an agent must be in writing or evidenced in writing. That appointment may be express or implied, it may be gathered from the facts and circumstances of a case and from the conduct of the parties.*
>
> (emphasis added)

[66] The issue on the authority of TKH also arose in the case of *Euroland & Development Sdn Bhd v. Supreme Code Land Sdn Bhd* [2024] CLJU 1086; [2024] 5 MLRA 233; [2024] 3 MELR 593; [2024] 4 MLJ 732 that involved a similar dispute, where the Court of Appeal held that chief operating officer was conferred with the authorisation to sign receipts by virtue of the position he hold in the company when it stated that:

> *[27] It is difficult for us to ignored the fact that Thomas Tong is a nephew to DW10 and also one of the directors in the defendant company. Thus, the defendant is responsible for all actions taken by Thomas Tong in his capacity as the Chief Operating Officer of the defendant.*
>
> (emphasis added)

[67] In the instant case, TKH is a nephew of DW3 and also one of the first defendant's general manager in the first defendant. Thus, the first defendant is responsible for all the actions taken by TKH in his capacity as the group chief operating officer, as he claimed in the company's email dated 11 September 2017 (p. 558 of 'Rekod Rayuan Jilid 3 Bahagian C(1)') and/or general manager of the first defendant, as testified by the first defendant's witnesses.

[68] The first defendant stated that Dato' Sri Jeffrey, the Chief Executive Officer, is the only Director who is authorised to sell property of the first defendant and not TKH.

[69] However, it may be noted that even the second defendant, who was the first defendant's panel solicitor who handled conveyancing transactions for the first defendant and the SPA of the said property, did not find anything untoward or irregular in the circumstances respecting the transaction. The second defendant, in fact, believed that TKH was the authorised person to sign the SPA and DMC and all the relevant documents on behalf of the first defendant based on contemporaneous emails and letters between the plaintiff, the plaintiff's solicitor, TKH and the second defendant.

[70] Any reasonable person in the circumstances of the case would have believed that TKH have the requisite authority to represent and execute the SPA and DMC on behalf of the first defendant.

[71] In our view, the fact that Dato' Sri Jeffrey was the only person authorised to sell the property of the first defendant is an internal management of the first defendant. The plaintiff and even the second defendant, who was the first defendant's panel of solicitor, are third parties to the so-called internal management. Therefore, we are of the view that it was not wrong for the plaintiff and second defendant to assume that everything was in order, and it was proper for TKH to have signed the SPA and DMC on behalf of the first defendant.

[72] Based on the above, we are of the view that the SPA and DMC are valid and bind the first defendant pursuant to *Turquand*'s Rule. (See: *Royal British Bank v. Turquand* [1856] 119 ER 474).

[73] The *Turquand*'s Rule was applied by the Court of Appeal in *Badan Pengurusan Tiara Duta v. Timeout Resources Sdn Bhd* [2014] 8 CLJ 133; [2014] 5 MLRA 500; [2015] 1 MLJ 110 that:

> (24) ...
>
> (f) in any event, the internal management rule must apply in the present circumstances. *The respondent is a third party to the internal management of the appellant and was not put on notice at any time to inquire into the authority, or the lack of it, of SP2 and SP3 to enter into*

A *the agreement. Thus, it was not wrong for the respondent to assume that everything was in order and that it was proper for SP2 and SP3 to have signed the agreements.*

(g) In *Royal British Bank v. Turquand* [1856] 119 ER 474 it was held that *"persons contracting with a company and dealing in good faith may*
B *assume that acts within its constitution and powers have been properly and duly performed, and are not bound to inquire whether acts of internal management have been regular".*

The *Turquand*'s Rule would, in our view similarly apply to this case, even though the appellant is not a company incorporated under
C the Companies Act 1965.

..

(iv) In the case of *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1997] 2 MLRA 202; [1998] 1 MLJ 465; [1998] 1 CLJ 793; [1998] 1 AMR 169, it was similarly held by Edgar Joseph
D Jr FCJ that:

> that effect of the *Turquand's* Rule is that it *reduces the enquiries which outsiders having dealings with a company must take. Such outsiders have no right to insist on proof by the company's directors that the provisions of its Memorandum & Articles have been complied*
E *with, and they cannot therefore be deemed to have constructive notice of some failure to comply which they have no means of discovering.*
>
> (emphasis added)

[74] More importantly, again, we find that parties had agreed to place SPA, DMC, emails, cheques and letters in Part A of the CABD.

F (See: para. [28] above).

[75] As we have stated in paras. [46] to [50] above, once a document is placed in Part A, the contents as well as the truth are deemed to be proved. The maker of the document, *ie*, SPA (TKH), need not be called because the
G authenticity of the SPA is not in dispute.

[76] The first defendant's stance that TKH has no authority to execute the SPA and DMC on behalf of the first defendant went against their stance in the trial, contradicting their placement of the document, *ie*, SPA under Part A.

H **[77]** Given the above, we are of the view that TKH's actions in transacting the said property and in executing the SPA and DMS bind the first defendant.

Whether The Second Defendant Was Negligent In Handling The SPA Transaction

I **[78]** The plaintiff sought to assert that the second defendant, as the stakeholder of the purchase price, breached their fiduciary duty by releasing the purchase funds to a third party (TKH) without proper verification from

the vendor, *ie*, the first defendant. In this regard, the plaintiff contended that the second defendant allegedly acted negligently by not holding the funds in trust and ensuring the proper execution of the sale transaction before releasing the money.

[79] From the evidence produced before this court, we find that the second defendant acted in accordance with the instruction given by the first defendant's representative, TKH, who had the authority to issue such instruction.

[80] The SPA was executed with the second defendant serving as the vendor's solicitor for the first defendant, and LCM representing the plaintiff. The second defendant performed due diligence by requesting necessary company documents from the first defendant's representative, which the plaintiff's solicitors acknowledged. This can be seen in the letter dated 5 September 2017 from the office of LCM to the second defendant, which stated that:

> Kindly be informed that we have received the full set of the CTC Vendor's company **documents and resolutions** for the sale and purchase of the above Property from your client's representative Mr Tong Kah Hoe, and the our client has also inspected the above Property with Mr. Tong Kah Hoe, and satisfied with the documents, received as well as the condition of the above Property.
>
> (emphasis added)

This led to the completion of the transaction on 20 September 2017.

[81] Throughout the process, the second defendant followed instructions from the first defendant's representative, TKH, as confirmed by various documents, including emails and letters dated between 29 August 2017 and 11 September 2017. PW2 admitted that the plaintiff agreed to pay the full purchase price upfront. The plaintiff's solicitors paid RM502,500 by cheque to the second defendant, with the remaining amount paid directly to the first defendant's representative.

[82] Upon execution and stamping of the agreement, the second defendant released the funds to the first defendant through TKH as per the instructions. Neither the plaintiff nor their solicitor, *ie*, LCM, prevented this. The funds were released on 15 September 2017 after vacant possession was delivered to the plaintiff on 12 September 2017, as confirmed by DW4's testimony. The duly stamped agreement was delivered to the second defendant on 20 September 2017.

[83] Given the above, we find that the second defendant had also exercised reasonable care in verifying the authority of TKH and released the funds only after confirming the completion of the necessary formalities, including the delivery of vacant possession and the stamping of the SPA. As such, the plaintiff's complaint on this issue is untenable and does not reflect the realities of the transaction.

[84] The plaintiff also raised the issue that the second defendant should have been alerted and raised suspicion when they saw the buyback agreement.

[85] We find this issue regarding the buyback agreement and 'should have been alert' should not be entertained as it was not raised and pleaded in the plaintiff's pleading.

(See: *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944; [2015] 6 MLJ 1; [2015] 5 MLRA 665; [2018] 3 AMR 259).

[86] Further, we are of the view that there is no legal duty imposed on the second defendant to raise suspicion about the buyback agreement, particularly as the second defendant was not involved in its preparation or execution. The suggestion that the second defendant should have been suspicious is speculative and unfounded.

[87] The plaintiff also failed to adduce any documentary evidence to show that the second defendant had any knowledge of the buyback agreement during the conduct of the sale and purchase transaction. The assertion that the second defendant should have raised suspicion is thus without merit, as there was no awareness of the agreement until after the dispute arose.

[88] In the case of *Syarikat Rodziah v. Malayan Banking Bhd* [2021] 5 CLJ 170; [2021] 3 MLRA 556; [2021] 5 MLJ 688, the Court of Appeal held that:

> [38] It is clear from the two letters above that the second defendant was not involved in the plaintiff's decision-making process to grant the banking facilities to STT. The second defendant was not involved in determining the creditworthiness of STT and its directors or guarantors. The plaintiff had its own internal process to scrutinise the application for the banking facilities and the granting of the same was ultimately decided by the plaintiff. From the letter of instruction dated 2 April 2015 it is apparent that the second defendant's duty was limited to the preparation of the necessary loan documentation: that is to prepare the necessary documents for the banking facilities, have them duly stamped and then sent the documents to the Johore Bahru CAC for further action. This can be discerned from the fact that the instruction to the second defendant was given on 2 April 2015 after the plaintiff had approved and granted the banking facilities to STT on 26 March 2015.
>
> [39] It is undisputed that the second defendant was not involved in the preparation of the sale and purchase agreement (SPA) for RM7 million nor was it aware of the SPA for RM432,000 for the same properties. The SPA for the properties between STT (the purchaser) and one King Kuai Bing @ Lim Kui Ming (the vendor) for the purchase price of RM7 million was prepared by another solicitor and not by the second defendant. The SPA for RM7 million was the only SPA the second defendant had received from the plaintiff and the second defendant was not aware that

there was another SPA for a lesser purchase price of RM4320,000.00 (the second SPA) for the same properties. Since both the SPAs were not prepared by the second defendant, how could the second defendant had known that the price of the properties was overvalued. That knowledge should be imputed to the solicitor who prepared the SPAs and the valuer who value the properties (the first defendant) and not the second defendant.

[89] In the instant case, we find that the buyback agreement was entered into between the first defendant and the plaintiff without the knowledge or involvement of the second defendant. The second defendant was not instructed to prepare the buyback agreement, nor was it within the scope of their retainer to provide advice on such an agreement. During the trial, we find that the evidence has emerged that the second defendant's role was limited to acting as the vendor's solicitor for the sale and purchase transaction, and the buyback agreement clearly falls outside of this scope.

[90] Based on the above, we find that the learned HCJ correctly found that the second defendant had acted within the scope of its retainer and performed its duties in accordance with the instructions received.

[91] The plaintiff also alleged that the second defendant had committed professional negligence for releasing the purchase price to TKH, who, according to the plaintiff, was not an authorised party to the transaction. Premised therefrom, it is the plaintiff's assertion that the second defendant had allegedly failed to uphold the standard of care expected of a conveyancing solicitor, which resulted in financial loss and that the failure to complete the sale transaction properly.

[92] It is well-established law that a solicitor acting for one party in a transaction owes no duty of care to the other party. In this case, the second defendant was acting as a vendor's solicitor, and their duty was solely to their client, the first defendant. The plaintiff was represented by its own solicitor, LCM, who was responsible for safeguarding the plaintiff's interests. PW2 acted on the advice of his own solicitors, LCM and dealt solely with him during the transaction. There was no voluntary assumption of responsibility by the second defendant towards the plaintiff.

[93] Therefore, we are of the view that the plaintiff's attempt to impose a duty of care or act negligently on the second defendant is untenable and devoid of merit.

(See: *Rajamani Meyappa Chettiar v. Eng Beng Development Sdn Bhd & Ors* [2016] 4 CLJ 510; [2016] 3 MLJ 660; [2016] 3 MLRA 581.

[94] The learned HCJ has made the finding that there is no relationship of proximity between the plaintiff and the second defendant to impose a duty of care on the second defendant, in that the essential ingredient of a duty of care is not satisfied.

[95] Based on the evidence presented before this court, we find no appealable error or misdirection on the part of the learned HCJ in her finding when Her Ladyship had stated in her grounds of judgment as follows:

> Whether KV Ong, Chua and Partners was negligent in handling the sale and purchase transaction;
>
> [50] I shall now deal with the claim of negligence against KVOC. It is trite law that the essential ingredients of negligence are duty, breach and damage which resulted from the breach. For a duty of care to arise, the relationship between the parties must be one of proximity in which the law would consider it fair, just and reasonable to impose such a duty, (See: *Tan Wei Hong (a child suing through his guardian ad litem and next friend, Chuang Yin E) & Ors v. Malaysia Airlines System Bhd & Ors* [2017] 4 MLJ 547 (Court of Appeal), *Lok Kok Beng & 49 Ors v. Loh Chiak Eong & Anor* [2015] 4 MLJ 734 (Federal Court)).
>
> [51] KVOC was not the solicitors for Pearl Streams in the sale and purchase transaction. Instead, Pearl Steams engaged LCM to act for them. KVOC contends there is no duty of care owed to the plaintiff. Several authorities were cited in argument which I found particularly instructive.
>
> [52] In *Tetuan Abdul Aziz & Associates v. Sunshines Haven Sdn Bhd* [2016] MLJU 264 the Court of Appeal held:
>
> > [27] *As a general rule, a solicitor acting for a client in a civil case will owe no duty of care to the opponent either in litigation or in non-contentious business*: *Muhamad Yusop Abdul Wahab v. American Express (M) Sdn Bhd* (*supra*). In *Pavarthi & Anorv Rawang Hills Resort Sdn Bhd & Anor* (*supra*), Low Hop Bing J (as he then was) opined that in normal conveyancing transactions solicitors who are acting for a seller do not in general owe to the would-be buyer a duty of care when answering inquiries before contract or the like.
>
> [53] In *Sia Hiong Tee & Ors v. Chong Su Kong & Ors* [2013] 6 MLJ 438, the Court of Appeal approved the High Court's findings *that the third party who acted for the plaintiff owed no duty to care to the defendants who had their own solicitors*. It held as follows:
>
> > [38] The next issue to be considered is the appellants' third party claim. The learned trial judge had dismissed this claim. In their memorandum of appeal the appellants contend that the learned judge erred in law and in fact when he erroneously held that the third party owes no duty of care be it in tort or contract to the appellants.
> >
> > [39] On this issue the learned judge had this to say in his ground of judgment:
> >
> > > The preliminary question which needs to be addressed is *whether the third party owes a duty of care to the defendants. It is undisputed that both the plaintiffs and the defendants had engaged*

different solicitors to act for them in respect of the legal documents for the sale and purchase of the property. The third party acted for the plaintiffs (though denied by the plaintiff) while DW2 acted for the defendants. That being the case, the third party owes no duty of care be it in tort or contract to the defendants. In tort, there is no relationship of proximity between the third party and the defendants. In contract, the defendants had no retainer with the third party. The only person who had relationship of proximity and a retainer with the defendants is DW2 and as he is not party to this suit, the court is prohibited from making any finding on that relationship.

[40] The learned judge also found that the defendants had engaged DW2 as their solicitors and that the question of representation by third party that certain legal documents are proper does not arise in so far as his dealing with the defendants is concerned.

[41] Since the learned judge had made findings of facts on the issue involving the relationship between the third party and the appellants, we do not think that we should disturb such findings, in fact we may say that on the evidence we agree with the findings of the learned judge.

...

[56] *PW2 stated that he left it to his lawyer to deal with TKH. He acted on the advice of LCM before signing the SPA. He trusted LCM to deal with the requisite documentation. He stated that he did not deal with Beverly Heights or its representative directly. Clearly, it was to LCM that he looked to, for advice and placed reliance on. As he had sued KCOV and not his own solicitor, at the very least, he ought to have called LCM as a witness. He did not.*

[57] *On the evidence, I do not find any relationship of proximity between Pearls Streams and KVOC to impose a duty of care to be owed by KVOC to it. The essential ingredient of duty of care is not satisfied.*

(emphasis added)

[96] On the issue as to whether the second defendant was negligent in handling the sale and purchase transaction, we find that the grounds of judgment of the learned HCJ clearly showed that Her Ladyship's finding was based on the evidence that was disclosed at trial. We agree with Her Ladyship's finding and see no reason to disturb it.

[97] On the issue of the alleged conspiracy to defraud and fraud, we find that the plaintiff has failed to provide any evidence to support its claims of conspiracy or fraud involving the second defendant. The second defendant's role in the transaction was to act on behalf of its client, *ie*, the first defendant, and to follow the instructions provided by the first defendant's authorised representative.

[98] There was no evidence presented to show that the second defendant was at the material time privy or a party to the alleged fraud. Clearly, the plaintiff's allegations are based on conjecture. Therefore, it is unsurprising that the learned HCJ in evaluating the evidence has made the finding that there is no evidence of such alleged fraud.

Loss Of Prospective Profit From The Resale Of The Said Property

[99] We noticed that in para. 20(c) of the amended statement of claim, the plaintiff claims for an alternative prayer that the first and second defendants be jointly and severally ordered to refund the purchase price paid for the said property including the difference of RM240,000 being the prospective profit out of the resale of the said property to Thong Wai Hong (PW1).

[100] The plaintiff gave the impression that it would have made a profit of RM240,000, being the prospective profit from the resale of the said property to PW1.

[101] However, having perused the evidence produced, especially the evidence of PW1, we find that the so-called prospective profit of RM240,000 is not certain and is merely speculative. This can be gleaned from the evidence of PW1 when he said as follows:

– *Alright. Upon the appointment of Mr Loke Chee Min as your solicitor, were any documents executed between you and him?*

TWH *Not yet.*

– *And no documents were prepared by him?*

TWH *The very first meeting was just to establish my real interest.*

Alright.

TWH *To buy the properties. After that 1 because I'm not a property investor so everything 1 left it to them.*

Alright.

TWH *To prepare for me, while waiting for me to get my funding.*

Ok, but you have met with Mr Loke Chee Min?

TWH Yes,

Did you end up paying any deposit or any form of booking?

TWH *No.*

Did you end up getting any forfeited money of any compensation for -

TWH *1 don't know, I didn't pay anything at all, so no deposit.*

(See: pp. 203-204 of Rekod Rayuan, Jilid 2A, Bahagian B).

TCL *And you have given evidence on how you came to know about this property and how you allegedly wanted to buy this property. Do you have any documents to support your answer so far?*

TWH *No.*

TCL *Therefore, is it fair for me to say since you do not have any document to support what you say, we cannot verity whether your answer is correct or not. do you agree with what I'm saying?*

TWH *I'm not sure, I'm here to be a witness so nothing is black and white but I'm genuinely showed my interest to buy property for investment for my kids, but nothing happened after that so I lost nothing, I didn't pay any deposit, I only lost some times only.*

TCL *So I also put it to you that between your dealings with Mr So, you never signed any legal document?*

TWH *Not at all.*

TCL And therefore there is no duty owed by Mr So to you, correct?

TWH *More or less because I was waiting for his lawyer to prepare the S&P while waiting for me to get my money, funding prepared because I have not bought properties for quite some time so I need to talk to the bankers whether I was eligible to do so or not.*

TCL So everything was rather informal would you agree?

TWH Yes

TCL *And there is no any formal lawyer, document or legal document that was signed?*

TWH *Only gentleman agreement.*

JUDGE You said -

(emphasis added)

(See: p. 206 of Rekod Rayuan, Jilid 2A Bahagian B).

[102] Given the above, we are of the opinion that the so-called prospective profit is merely speculative because:

(i) no solicitor was engaged to prepare the sale and purchase agreement for the sale of the said property;

(ii) this was because PW1 needed to obtain funding from the bank before the sale and purchase transaction could be carried out;

(iii) there was no agreement signed by the plaintiff and PW1 to confirm that the said property was sold to PW1;

(iv) PW1 merely expressed the agreement to purchase the said property based on a gentleman's agreement; and

(v) no deposit was paid by PW1 to the plaintiff for the purchase of the said property.

[103] Based on the reasons given above, we allow the plaintiff's appeal in part against the first defendant and we make the consequential orders as follows:

(i) a declaration against the first defendant that the SPA and DMC executed on 12 September 2017 between the plaintiff and the first defendant is valid under the law;

(ii) as the said property has now been transferred to a third party, we order the first defendant to refund RM502,500 to the plaintiff, being the purchase price paid for the said property;

(iii) interest at the rate of 5% from the date of filing of the writ dated 12 April 2018 until the date of full payment and realisation; and

(iv) costs.

[104] In the upshot, the plaintiff's appeal against the second defendant is dismissed.

Appeal 122

[105] This is the first defendant's appeal against the decision of the learned HCJ in respect of part of Her Ladyship's decision that the counterclaim of the first defendant, premised on fraud and the tort of conspiracy to defraud/injure, is dismissed.

[106] To avoid any repetition, based on our earlier findings in Appeal 103, *inter alia*, that this is not an illegal moneylending transaction, the agreement is a normal SPA, and failure of the first defendant to provide any evidence to support its claims of conspiracy or fraud involving the plaintiff, LCM and TKH, thus, we find that this appeal has no merit.

Conclusion

[107] Based on the reasons above, we find that the learned HCJ erred in dismissing the plaintiff's claim against the first defendant and in allowing in part the first defendant's counterclaim against the plaintiff.

[108] We therefore unanimously set aside the decision of the High Court dated 15 December 2022 to the extent of the first defendant only. The plaintiff's Appeal 103 is hereby allowed in part as per paras. 103 and 104 above, and the first defendant's Appeal 122 is hereby dismissed.

[109] We also order costs as follows:

(i) Appeal 103:

(a) the plaintiff to pay the second defendant costs of RM15,000 subject to allocator;

(b) the first defendant to pay the plaintiffs cost of RM30,000 here and below, subject to allocator; and

(ii) Appeal 122:

(c) the first defendant to pay the plaintiff costs of RM10,000 subject to allocator.